IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 37 OF 2005

Sadanand Narayan Chingale & Ors. ... Appellants.

V/s.

Vishwanath Krishnappa Chingale & Ors. ... Respondents.

Mr. S.G. Deshmukh for the Appellants.
Mr. Vishwanath K. Chingale, Respondent in-person.

CORAM : A.S. OKA, J.
DATE : 26TH FEBRUARY 2007.

JUDGMENT :

. Submissions of the learned Advocates appearing for the parties were heard on the last date. The challenge in this First Appeal by the legal representatives of the original Plaintiffs is to the final decree dated 7th November 1996 passed by the learned Joint Civil Judge, Senior Division, Satara. The Appellants filed a suit for partition and separate possession. There was a preliminary decree passed in the said suit holding that the Appellants and Respondents were having one half share in the suit property.

2. In terms of the preliminary decree passed by the Trial Court, a Court Commissioner was appointed. The Court Commissioner visited the suit properties after notice to the parties. After visiting the suit properties, the Court Commissioner submitted a detailed report suggesting the proposed partition. Both the

parties were allowed to submit their objections to the report of the Court Commissioner. By the impugned Judgment and final Decree, the learned Trial Judge accepted the report of the commissioner alongwith Map II annexed to the Commissioner's report. The relevant part of the final decree reads thus :-

(1) The Commissioner's report, Exh.187 along with Map-II is accepted as it is.

(2) The C.T.S. No.46 along with marked portion P-Q-R-U-T out of C.T.S. No.179 be allotted to the D.H.

(3) The C.T.S. No.45/3 and C.T.S. No.46/A along with the marked portion N-C-P-Q-R-S out of C.T.S.No.179 be allotted to the J.D.No.1.

(4) The J.D. to pay an amount of Rs.42525/- to the D.H. in lieu of D.H's share in C.T.S.No.45/3.

(5) In para No.5 of the report, the area which is shown as 6Y2' x 4'-3", it shall be read as 6' x 1'-8".

3. The submission of the learned Advocate for the Appellants is that the learned Trial Judge has not at all considered the objections raised by the Appellants to the

report of the Commissioner. He submitted that the Court Commissioner has not considered the correct valuation of property bearing C.T.S. No. 45/3. He submitted that the Court Commissioner has grossly undervalued the said property bearing C.T.S. No.45/3. He invited my attention to the order dated 28th June 2005 passed by this Court in this appeal which records the offer of the Appellants. The said order records the statement of the Appellants that the price of the said disputed property is Rs.10 lakhs and therefore, the Appellants were ready to pay a sum of Rs.5 lakhs to the Respondents against the said property or the Respondents should pay a sum of Rs.5 lakhs to the Appellants. The said order records a statement of the Advocate of the Appellants that the third option is that the said disputed property should be put to auction and the sale proceeds can be equally distributed between the parties. His submission is that the Appellants are willing to stand by the said offer which is recorded in the aforesaid order of this Court. He submitted that no opportunity was granted by the learned Trial Judge to the Appellants to lead evidence regarding valuation of the disputed property.

4. The submission of the one of the Respondents appearing in-person is that the Appellants had an opportunity to lead the evidence but they have failed to do so. It is stated that the offer given by the Appellants was not acceptable to the Respondents. Their

submission is that no interference was called for.

5. I have carefully considered the submissions. I have also perused the Court Commissioner's report and other relevant documents on record. The Commissioner has dealt with four suit properties namely C.T.S.Nos.46, 46/A, 45/3 and 179 at Shaniwar Peth, Karad. Out of the four suit properties i.e. C.T.S.No. 179 is an open land with plinth. City Survey Nos. 46 and 46A are constructed houses. City Survey No.45/3 consist of a double storeyed building. The perusal of the report of the Commissioner shows that he has considered the measurements of the houses on the suit properties. The Commissioner has referred to order passed by this Court which records that as far as practicable, the properties possessed by the respective parties shall be allotted to their respective shares. The learned Commissioner noted that property bearing C.T.S.No.46 was in possession of the Appellants and the property bearing C.T.S.No.46A and 45/3 were in possession of the Respondents. The Court Commissioner has considered the valuation of the open land forming part of C.T.S.No.179. As far as division of the property is concerned, he has made two suggestions by producing two maps marked as Map-I and Map-II.

6. It will be necessary to refer to the objections submitted by the Appellants to the report of the Court

Commissioner. One of the objections is that there is no objective consideration of the nature of the suit properties by the Court Commissioner. In paragraph 6 of the said objections, the Appellants have alleged that the valuation of property bearing C.T.S.No.45/3 was more than Rs.2.5 lakhs and therefore, valuation of Rs.42,525/- taken by the Court Commissioner is on the lower side.

7. I have perused the Roznama of the proceedings. The Roznama shows that after the report of the Court Commissioner was received, both the parties were granted opportunity to file their respective reply to the Commissioner's report. The Appellants filed the reply raising various objections on 22nd August 1996. The Respondents filed their reply on 29th August 1996. The Roznama further shows that on 12th September 1996, the case was adjourned to 19th September 1996 for hearing arguments. Thereafter, the case was adjourned from time to time on various dates. Ultimately, the final decree has been passed on 7th November 1996. In between 29th August 1996 and 7th November 1996, there were six different dates fixed in the proceedings. However, there is no application made by the Appellants either seeking permission to cross-examine the Court Commissioner or seeking permission to lead evidence. Therefore, there is no merit in the submission of the Advocate for the Appellants that there was no opportunity made available to the Appellants to lead the evidence. This is not a case

where final decree was hurriedly passed by the Trial Court. There was enough opportunity available to the Appellants to make an attempt to lead evidence. It is not even the case of the Appellants that they applied for permission to lead evidence and the Trial Court did not grant the permission.

8. If according to the case of the Appellants, the correct valuation of land bearing No.45/3 was Rs.2.5 lakhs and above, an opportunity was always available to the Appellants to lead evidence either by producing valuation report or by cross-examining the Court Commissioner. However, the said opportunity was not availed of the Appellants.

9. Therefore, now, in this appeal against the final decree passed in a suit filed in the year 1979, the Appellants cannot be allowed to contend that the valuation of the said property made by the Court Commissioner is on the lower side.

10. The perusal of the impugned judgment shows that the learned Trial Judge has considered the Commissioner's report and objections raised by both the parties to the Commissioner's report. The learned Judge had noted that the Court Commissioner has suggested an equitable partition. In my view, no fault can be found in the acceptance of the report of the Court Commissioner by the

learned Trial Judge and consequently, the final decree passed in terms of the Commissioner's report.

11. There is no merit in the First Appeal and the same is accordingly dismissed.

12. No orders as to costs.

JUDGE